

For HOWARD C. MISKIN (HM7038)
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New York, New York 10118
(212) 268-0900

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
HAGGAR INTERNATIONAL CORPORATION,	:
d/b/a MONTANA FOOD INDUSTRIES,	:
	:
Plaintiff,	:
	:
v.	:
	:
UNITED COMPANY FOR FOOD INDUSTRY	:
CORPORATION; TRANS MID-EAST	:
SHIPPING & TRADING AGENCY, INC. and	:
UNITED COMPANY FOR FOOD	:
INDUSTRY, (USA) CORP.	:
	:
Defendants.	:
-----X	

Civil Action No.
03-CV-5789 (ARR)(CLP)

**DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS,
PURSUANT TO LOCAL RULE 56.1**

Defendants hereby submit their Response to Plaintiff's Statement of Material Facts,
pursuant to Local Rule 56.1.

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11. Hagggar's Statement of Material Facts – Attachment #6 is a true and accurate copy of U.S. Trademark Application Serial No. 73/834,192, filed on October 25, 1989.

However, United did not retain Timothy T. Tyson, Attorney of Record, to file this application. See, Magdy Maamoun Decl. ¶ 14. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5.

12. United did not retain Timothy T. Tyson, Attorney of Record, to file this application. See, Magdy Maamoun Decl. ¶ 14. The decision to abandon the application was not made by United. Id. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5.

13. United could not have filed its Petition to Cancel Hagggar's trademark registration for "MONTANA," Trademark Registration No. 1,585,940, in response to the PTO's "Non-final action," mailed by the PTO on August 16, 1990, for its "original application" to register "MONTANA" because United did not authorize Timothy T. Tyson to file and/or prosecute application Serial No. 73/834,192. United was not aware of application serial no. 73/834,192. Id. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5.

14. United did not authorize Timothy T. Tyson to file and/or prosecute application serial no. 73/834,192. See, Magdy Maamoun Decl. ¶ 14. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5.

15. United did not acquiesce to PTO's refusal to register "MONTANA" because it was not aware of application Serial No. 73/834,192. See, Magdy Maamoun Decl. ¶ 14. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5.

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17. United did not actually first become aware of Haggar's trademark registration for "MONTANA" in the U.S. through the "Non-final action" mailed to Timothy T. Tyson by the PTO on August 16, 1990, because United did not retain Timothy T. Tyson to represent it and to file and/or prosecute application Serial No. 73/834,192. See, Magdy Maamoun Decl. ¶ 14. United first became aware of Haggar's trademark registration for MONTANA in the U.S. after U.S. Customs seized United's shipments containing MONTANA branded products entering the U.S. in 1995. Id.; see, Alex Joudeh Decl. ¶5.

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31. United asserted its claim in “MONTANA” trademark, challenging Haggar’s trademark rights to the “MONTANA” trademark in the United States by filing a Petition to Cancel with the Trademark Trial and Appeal Board on March 25, 2002. See, Miskin Decl. Exhibit U.

32. Trans Mid-East is not the owner of the “MONTANA” trademark and was not a distributor of United’s MONTANA products until 2002. See, Alex Joudeh Decl. ¶9. Trans Mid-East was not required to assert claims against Haggar for infringement. Id. Timothy T. Tyson, Attorney of Record for application Serial No. 73/834,192 was not retained by Trans Mid-East and did not represent Trans Mid-East. Id. Trans Mid-East was not aware of application Serial No. 73/834, 192. Id.

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36. Nubar Terzibachian, a/k/a Nile Food Imports, did not challenge Haggar’s alleged trademark rights to the trademark “MONTANA” due to his relationship with Haggar. See, Alex Joudeh Decl. ¶ 5.

37. United did not challenge the seizure of United's MONTANA branded goods sent to Nubar Terzibachian, a/k/a Nile Food Imports, based on Nile Food Import's agreement with Haggar. See, Miskin Declaration Exhibits V, W and X.

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44. United asserted its claim in the "MONTANA" trademark, challenging Haggar's trademark rights to the "MONTANA" trademark in the United States by filing a Petition to Cancel with the Trademark Trial and Appeal Board on March 25, 2002. See Miskin Decl. Exhibit U. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5; also, see, Magdy Maamoun Decl. ¶ 14.

45. Trans Mid-East is not the owner of the "MONTANA" trademark and was not a distributor until 2002. See Alex Joudeh Decl. ¶9. Trans Mid-East was not required to assert claims against Haggar for infringement. Id. Timothy T. Tyson, Attorney of Record for application serial no. 73/834,192 was not retained by Trans Mid-East and did not represent Trans Mid-East. Id. Trans Mid-East was not aware of application Serial No. 73/834,192. Id.

46. United asserted its claim in the "MONTANA" trademark, challenging Haggar's trademark rights to the "MONTANA" trademark in the United States by filing a Petition

to Cancel with the Trademark Trial and Appeal Board on March 25, 2002. See Miskin Decl. Exhibit U. United first retained an attorney in the United States upon the urging of Alex Joudeh, a/k/a Trans Mid-East, in 2001. See, Alex Joudeh Decl. ¶ 5; also, see, Magdy Maamoun Decl. ¶ 14.

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51. Alfi al Masri was deposed on May 3, 2006, and any information and/or evidence he was able to provide is available through use of the deposition transcript and exhibits marked therein as evidence.

52. Recollection of Lawrence S. Cohen is irrelevant to United's claim against Haggar, because Lawrence S. Cohen did not represent United. See, Alex Joudeh Decl. ¶ 5.

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55. United did not retain Timothy T. Tyson as its Attorney, nor any other attorney in the law firm of Freilich, Hornbaker, Rosen & Fernandez, to represent it for filing and/or prosecution of the U.S. Trademark Application Serial No. 73/834,192 filed on October 25, 1989. See, Alex Joudeh Decl. ¶ 5; also, see, Magdy Maamoun Decl. ¶ 14.

56. Robert D. Hornbaker, a principal in the law firm variously known as Freilich, Hornbaker, Rosen & Fernandez and/or Freilich, Hornbaker & Rosen, for which Lawrence Cohen and Timothy Tyson were associated, is unable to locate records related to the firm's representation of United because United never retained the firm, nor any of its

attorneys, for assertion of United's rights in the trademark "MONTANA." See, Alex Joudeh Decl. ¶ 5; also, see, Magdy Maamoun Decl. ¶ 14.

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58. Neil F. Martin, a principal in the Brown Martin law firm, is unable to locate records related to the firm's representation of United because United never retained the firm, nor any of its attorneys, for assertion of United's rights in the trademark "MONTANA." See, Alex Joudeh Decl. ¶ 5; also, see, Magdy Maamoun Decl. ¶ 14.

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Dated: February 2, 2007

/S/_____

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EASTERN DISTRICT OF NEW YORK

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d/b/a MONTANA FOOD INDUSTRIES,	:
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Plaintiff,	:
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v.	:
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UNITED COMPANY FOR FOOD INDUSTRY	:
CORPORATION and TRANS MID-EAST	:
SHIPPING & TRADING AGENCY, INC.,	:
	:
Defendants.	:
-----X	

Civil Action No.
03-CV-5789 (ARR)(CLP)

I hereby certify that on February 5, 2007, a copy of the foregoing DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS, PURSUANT TO LOCAL RULE 56.1 was served upon Plaintiff via the ECF system to the attorneys for the Plaintiff listed below:

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/S/
Howard C. Miskin